

**Attachment B
Draft Order No. R3-2011-0006
Conditional Waiver of Waste Discharge Requirements
For Discharges from Irrigated Lands**

Submitted to the Water Board
by Agricultural Representatives
May 4, 2011
[replaces version provided by
Agricultural Representatives on
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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL COAST REGION**

**ORDER No. R3-2011-0006
ATTACHMENT B**

**TERMS AND CONDITIONS
FOR
DISCHARGER COMPLIANCE THROUGH THIRD PARTY GROUP
(WATERSHED GROUP OR COALITION)**

Attachment B to Order No. R3-2011-0006 contains the terms and conditions for Discharger compliance through a third party group, as allowed by Part F of this Order. The Conditional Waiver conditionally waives waste discharge requirements (WDRs) and reports of waste discharge for discharges of waste from irrigated lands to surface waters and groundwaters within the Central Coast Region. The Conditional Waiver establishes terms and conditions with which dischargers must comply to obtain coverage under and to be considered in compliance with the Conditional Waiver. As an alternative to complying with Parts G and H of this Order and other specified provisions, Dischargers may participate in a third party group that meets the terms and conditions of Attachment B to Order No. R3-2011-0006.

A third party group and/or its participants shall comply with the following conditions:

A. General

1. A third party group and/or its participants shall comply with all applicable conditions of the Conditional Waiver, including timely submittal of all technical reports specified in **Attachment B, Part B. Technical Reports**. Violations may result in enforcement action under the California Water Code (Water Code), including Central Coast Regional Water Quality Control Board (Central Coast Water Board) orders, or termination of compliance with Parts G and H and other specified conditions of Order No. R3-2011-0006 through the third party group.
2. The reports submitted to comply with Part F of Order No. R3-2011-0006 shall be signed by an authorized representative of a third party group.
3. Any person signing a report submitted as required of a third party group shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel and/or consultants properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that significant penalties exist for knowingly submitting false information, including the possibility of fine and imprisonment violations."

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4. A third party group shall maintain a Participant List to the extent feasible as provided information from the Central Coast Water Board concerning each Participant who is knowingly participating in the third party group. The Participant List shall include, at a minimum, (a) an assessor parcel number, (b) parcel size, (c) parcel owner or operator name, and (d) parcel owner or operator mailing address.
5. After the initial 90 days for joining from adoption of the Order, Dischargers may elect to join a third party group as an alternative to complying with Parts G and H, and other provisions as specified of Order No. R3-2011-0006 within 30 days of submittal of an annual updated Notice of Intent (NOI) submitted pursuant to Part E.55.d if submittal of the updated NOI elevates a Tier 1 or Tier 2 Discharger to a higher tier.
6. Dischargers who are participating in a third party group shall implement management practices, as necessary, to achieve best practicable treatment or control of the discharge to reduce wastes in the discharges to the extent feasible and that will work towards achieving compliance with applicable water quality standards, protect beneficial uses of waters of the state, and prevent nuisance.
7. Dischargers who are participating in a third party group shall work with the third party group to identify the risk of their operation as being low risk, medium risk or high risk for the following four categories: Toxicity and Sediment in Stormwater; Toxicity in Irrigation Runoff; Nutrients in Irrigation Runoff; and, Nitrate Leaching to Groundwater. For example, an agricultural operation that has no irrigation runoff would be considered a low risk operation for Toxicity in Irrigation Runoff and Nutrients in Irrigation Runoff but may be considered to be a high risk operation for Nitrate Leaching to Groundwater, depending on the site specific conditions of the operation. Factors for determining risks for the various categories shall be established by the third party group and be part of the General Report to the Central Coast Water Board as required in **Part B, Technical Reports** below.
8. For Dischargers participating in a third party group, failure to pay third party group fees voids a selection or notification of the option to participate in a third party group instead of complying with additional conditions and provisions in Parts G and H and other specified provisions in Order No. R3-2011-0006 and

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hence requires immediate compliance with additional conditions and provisions in Parts G and H and other specified provisions as applicable pursuant to Order No. R3-2011-0006.

9. A third party group and/or its participants shall take all reasonable steps to work towards meeting applicable water quality standards.
10. A third party group and/or its participants shall maintain in good working order and operate as efficiently as possible any facility or control system, including management practices and monitoring devices installed or used to achieve compliance with Order No. R3-2011-0006.

Part B. Technical Reports

1. A third party group seeking to be an alternative pursuant to Part F of Order No. R3-2011-0006, shall submit a completed NOI to the Central Coast Water Board within 90 days of adoption of the Order. The NOI shall include the name of the third party group, the geographic area and/or commodity for which the third party group intends to cover, contact information, and an explanation as to how the third party group intends to operate and conduct the functions identified above.
2. Upon submittal of a complete NOI that meets the requirements in Attachment B, Part B, paragraph 1, the Executive Officer of the Central Coast Water Board shall issue a Notice of Applicability (NOA) that extends compliance with Parts G and H and other specified provisions of Order No. R3-2011-0006 to the third party group and/or its participants. If the Executive Officer fails to respond to a submittal of a NOI within 60-days, the NOI will be presumed to meet the requirements of Attachment B and a NOA will be presumed to automatically issue.
3. Within 60 days after Dischargers are required to declare their intent to join a third party group as allowed by Part F of Order No. R3-2011-0006, the Executive Officer of the Central Coast Water Board shall provide to qualifying third party groups as applicable the declarations of intent from growers/landowners that have elected participation in a third party group. As additional Dischargers declare their intent to join a third party group due to qualifying changes in operations, the Executive Officer of the Central Coast Water Board shall provide qualifying third party groups the additional declarations of intent as applicable.
4. A third party group that submits an NOI and receives an NOA, shall submit, within 6 months of receipt of the NOA or within 6 months of the automatic issuance of an NOA, a General Report/Workplan.
 - a. The General Report/Workplan shall identify the specific criteria and weighting system the third party group intends to use to determine an

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operation's level of risk to water quality for the following four individual categories:

- i. Toxicity and Sediment in Stormwater. Criteria for this category may include, e.g., percentage of slopes, sediment basins, presence of cover crops and/or bare soils, use of plastics or impervious surfaces, and application of priority pesticides during the winter months.
- ii. Toxicity in Irrigation Runoff. Criteria for this category may include, e.g., the presence of irrigation runoff, application of priority pesticides, type of irrigation system, use of treatment systems, and drainage to impaired water bodies.
- iii. Nutrients in Irrigation Runoff. Criteria for this category may include, e.g., nitrate background levels in source water supplies, operation of tile drains, drainage to areas with history of bio-stimulation, presence of vegetative strips or collective treatment systems designed to remove nitrates, and the implementation of a nutrient management program.
- iv. Nitrate Leaching to Groundwater. Criteria for this category may include, e.g., the intrinsic vulnerability of underlying groundwater based on soil classification, crop type and irrigation system, and implementation of a nutrient management plan that includes soil and water testing for nitrate.

- b. The General Report/Workplan shall identify a proposed process for conducting audit evaluations of at least 20% of the Participants' operations each year that are participating in the third party group, and a proposed process that conducts audits on all of the Participants' operations at least once over the term of Order No. R3-2011-0006. The proposed audit process shall prioritize audits of operations by considering conducting audits on operations in impaired watersheds and/or in areas with known nitrate impairments to groundwater first. As part of the proposed audit process identified in the General Report/Workplan, a third party group shall include all of the following:

- i. A Technical Advisory Committee. The technical advisory committee shall be comprised of professionals, technical experts, growers and/or academicians that have experience in, or in-depth knowledge of, disciplines associated with irrigated agriculture (e.g., agronomists, soil scientists, hydrologists, etc.). The technical advisory committee shall include at least one grower; however, no more than 50% of the technical advisory committee shall include members that are subject to the terms of the Order itself, or be

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directly employed by a person subject to the terms of the Order. Members of the technical advisory committee may receive reasonable compensation from the third party group for their participation in the technical advisory committee. The role of the technical advisory committee is to assist the third party group in developing an appropriate audit process, and identify appropriate criteria that includes but is not limited to the criteria identified in sub-sections (1) through (4) below.

ii. Audit Criteria. The General Report/Workplan shall include the following audit criteria:

(a) The audit evaluation shall include a review of the individual participant's Farm Water Quality Plan, available sub-watershed monitoring data and an individual participant's determination of risk for the four categories as described above in sub-section x.

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(b) The audit evaluation process shall verify the participant's determination of risk for the identified four categories, and shall review the Farm Water Quality Management Plan and the management practices being implemented by the participant to address those categories for which the participant is considered to be at a medium or high risk. When reviewing management practices, the audit evaluation shall consider if the management practices being implemented are those known, documented and/or commonly accepted by the industry to improve and/or protect water quality.

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(c) If an audit evaluation indicates that the participant has incorrectly characterized the risk of his/her operation for any of the four categories, the General Report/Workplan shall include a process whereby the participant is asked to modify its risk characterization(s) for his/her operation.

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(d) If an audit evaluation indicates that the participant's Farm Water Quality Management Plan needs to be amended, and the operation needs to implement new or additional management practices (i.e., those known, documented and/or commonly accepted by the industry to improve and/or protect water quality) to address medium or high risks for any of the four categories, the General Report/Workplan shall include a process whereby the third party group works with the individual participant to assist in updating the Farm Water Quality Management Plan and in educating the participant on the need for improved best management

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practices that are known, documented and/or commonly accepted by the industry to improve and/or protect water quality. The General Report/Workplan shall also indicate how the third party group intends to, seek out other technical resources to assist the individual participant.

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iii. An Audit Review Process. The General Report/Workplan shall include a process for the review of audits conducted by the auditors. The audit reviews may be conducted by the governing body of the third party group, an established sub-committee of the third party group, or other appropriate entity as specified in the General Report/Workplan.

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iv. Participant Termination Process. The General Report/Workplan shall include a process for the termination of third party group participants that includes the following:

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(a) Process for termination if the participant fails to update his/her Farm Water Quality Management Plan, fails to begin implementing management practices, and/or take all reasonable and customary steps necessary to implement management practices that are known, documented and/or commonly accepted by the industry to improve and/or protect water quality within 12 months of it being determined that such changes are necessary.

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(b) The third party group's termination process must include reporting the participant's termination to the Central Coast Water Board within 30-days of the participant's failure to respond to the third party group.

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(c) The third party group must have an established process that gives the participant the opportunity to challenge/appeal an auditor's evaluation and/or determination that the participant is not updating the Farm Water Quality Management Plan, beginning to implement management practices, and/or taking all reasonable and customary steps necessary to implement management practices, prior to the third party group's obligation for reporting a participant's termination to the Central Coast Water Board. The third party group's process for allowing challenges/appeals prior to termination, should allow the participant's challenge to be made to the governing body of the third party group. If the governing body finds that an auditor's determination is correct and the participant does not agree to update his/her Farm Water Quality Management Plan and/or take all reasonable and

customary steps necessary to implement management practices, then the third party group shall report the participant's termination to the Central Coast Water Board within 30-days.

v. Public Advisory Committee. The General Report/Workplan shall also include the development of a public advisory committee that is tasked with reviewing the annual reports required by Part B.5 below. The General Report/Workplan shall establish a process for the public advisory committee to make recommendations to the governing body of the third party group for consideration - prior to the submittal of such reports to the Central Coast Water Board. The public advisory committee shall include, but is not limited to, representatives from the agricultural community, state agencies, local agencies, trade associations and the general public. No more than 50% of the public advisory committee may consist of representatives from agriculture.

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c. The implementation of management practices may include the implementation of Collective Treatment Systems, where appropriate and applicable. Collective Treatment Systems will likely require specific engineering, and may require collaboration from public agencies, technical experts, and other landowners/operators in the watershed.

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d. A third party group may conduct site-specific studies to determine the effectiveness of management practices. When undertaking such special studies, the third party group's technical advisory committee should review the study plan prior to implementation and provide input and make recommendations with respect to the appropriateness of the study plan proposed.

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5. **Within 1 year of Executive Officer approval of the third party group's general report and annually thereafter**, a third party group shall submit an Annual Report to the Central Coast Water Board that includes the results of the audit evaluations in an aggregated format as specified in Monitoring and Reporting Program Order No. R3-2011-0006-04.
6. If a third party group fails to provide the technical reports required in Attachment B, Part B and in MRP Order No. R3-2011-0006-04 in a timely manner, the Executive Officer may terminate the third party group. If termination of a third party group occurs, the participants may within 60 days join another third party group, or form a new third party group. If a third party group participant does not join another existing third party group or participate in a newly formed third party group, then the Discharger will immediately be subject

to Parts G and H, and other specified provisions in Order No. R3-2011-0006 as applicable.

7. All reports submitted to the Central Coast Water Board by a third party group shall be available for public inspection at the Central Coast Water Board offices, except for reports, or portions of such reports, subject to an exemption from public disclosure in accordance with California law and regulations, including trade secrets and secret processes under Water Code section 13267(b)(2), and the Public Records Act.